Davis v. *Bromley Corporation* was not followed in the Privy Council decision of *Asok Kumar David* v. *Abdul Cader* [5] wherein their Lordships held that assuming that the appellant in the case had done all that was required to qualify him for a grant of licence, the respondent owed some duty to the appellant with regard to the execution of the statutory powers and if the respondents had in fact acted maliciously in refusing the licence, the action might lie.

Had the Ordinance no statutory remedy such as provided in section 144(13), the effect of this decision would dispose of the third issue of law in favour of the plaintiffs.

However, the existence of this statutory remedy poses the question — Does the plaintiff have a right to elect between such statutory remedy and an action for damages?

I have not been able to discover any decided case which would assist in providing an answer to the above question. However in the 5th Edition of *Hart's* Introduction to the Law of Local Government and Administration appears the following passage:—

"The discovery of the statutory intention is a matter of construction and no definite rules can be laid down in this confusing and necessary branch of the law. It is however clear that the provision by the statute of a specific remedy for a failure to perform the duty imposed by it, tend to show its intention to exclude an action for damages, and this is even so when the specific remedy is an extra-judicial one, as by an appeal to a Minister or resort to default powers such as those contained in the Public Health Act, 1875".

This passage inclines me to the view that even where the specific remedy provided is for faliure to perform, or in this case the improper exercise of a discretionary power, the court would have to seek the intention of the legislature. I am of the view that the obvious intention is to exclude an action for damages.

Lastly, I shall consider the defence of limitation. Under section 6(2) of the Ordinance the defendants constitute a body corporate, and read in conjunction with the definition of "persons" in the Interpretation and General Clauses Ordinance 1948, they would, obviously, come within the protection of the Public Authorities Protection Ordinance 1948. The defendants argue that this suit is time-barred since section 2(a) of the above Ordinance would apply. The relevant part of that section reads as follows:—

"2. Where, after the coming into force of this Ordinance, any suit, action, prosecution or other proceeding is commenced in the Federation against any person for any act done in pursuance or execution or intended execution of any written law or of any public duty or authority or in respect of any alleged neglect or default in the execution of any such written law, duty or authority the following provisions shall have effect —

(a) the suit, action, prosecution or proceeding shall not lie or be instituted unless it is commenced within twelve months next after the act, neglect or default complained of or, in the case of a continuance of injury or damage, within twelve months next after the ceasing thereof;"

In the case of *Carey* v. *Metropolitan Borough of Bermondsey* [6] Court of Appeal held in respect of that section of the English Act which is *in pari materia* with our section 2(a) that "the language of the section was reasonably plain and it was manifest that the continuance of the injury or damage meant the continuance of the act which caused the damage." Time would therefore begin to run for the purposes of the Ordinance, from the time when the act was caused, not from the time when the injury or damage ceased, or in the case of a continuing injury or damage, when the act causing the injury or damage ceased.

For the defendants it was submitted that the time began to run from 23rd December 1961, the day on which plaintiffs' architect was informed by the municipal engineer that the amended plan No. 9322 would not be approved. On behalf of the plaintiffs it was argued that time began to run only from 27th June 1962 when the municipal engineer approved the amended plan. Until then there had been a continuation of the refusal, the act which they claim caused the damage. Since the writ was issued on 27th April 1963 plaintiffs contended that the suit had been commenced within time.

If the refusal to approve the amended plan, by the defendants was actionable, it is my view that there had indeed been a continuation of the act, and that therefore the plaintiffs were correct in saying that the act causing damage ceased only from 27th June 1962. It would then follow that this suit is not time-barred cannot affect the outcome.

However, in view of the decision I arrive at, as regards the third issue of law, the fact that the suit is not time-barred cannot effect the outcome.

I find that there is no cause of action and the suit is dismissed with costs.

Action dismissed.

Solicitors: *Sault, Keith Sellar & Co.; Braddell & Ramani.*

LUE THIAN SOO v. S. MOHAMED NATHAR & CO.

[O.C.J. (Wan Suleiman J.) January 8, 1967]

[Kota Bharu — Civil Suit No. 111 of 1964]

Landlord and Tenant — Notice to quit served when Ordinance not in force — Continued possession — Statutory tenant — Control of Rent Ordinance, 1956, ss. 1(3), 20(a).

Legislation — Control of Rent Ordinance — Failure to keep in force — Control of Rent (Application to Kelantan) Enactment, 1964 — Retrospective effect.

Section 1(3) of the Control of Rent Ordinance, 1956 requires the Ruler in Council of a State to make an

order every 12 months for the continued operation of the Ordinance. This was not done in Kelantan after June 30, 1964. On September 29, 1964, the plaintiff, owner of a business premises served a notice to quit on the defendants, his tenants. On non-compliance with the notice, he brought an action for recovery of vacant possession of the premises. The contention of the plaintiff was that the notice was proper as the Control of Rent Ordinance, 1956 was not in force at the time when it was served. The defendants contended that the notice did not lawfully terminate the tenancy, since the Control of Rent Ordinance was retrospectively kept in force by the Control of Rent (Application to Kelantan) Enactment.

Held: the Control of Rent (Application to Kelantan) Enactment, 1964 applied to the Control of Rent Ordinance, 1956 with retrospective effect so as to afford protection to tenants in the second half of 1964. As the defendants continued to be in possession of the premises after the termination of the tenancy, they were statutory tenants within the meaning of section 20(a) of the Control of Rent Ordinance.

Case referred to:—

(1) *Ramon* v. *City of London Real Property Co.* [1921] 1 K.B. 49.

CIVIL SUIT.

Jegathesan for the plaintiff.

Wilson Anthony for the defendants.

Wan Suleiman J.: In this action the plaintiff who is the owner of business premises No. 349-I Jalan Temenggong, Kota Bharu, seeks to obtain *inter alia* vacant possession of the said premises from the defendants, his tenants on a monthly tenancy upon whom he had served a notice on the 29th day of September 1964, terminating the said tenancy on the 31st day of October, 1964.

The defendants contend that the notice did not lawfully terminate their tenancy, since it is protected by the provisions of the Control of Rent (Application to Kelantan) Enactment, 1964.

On this point of law being argued as a preliminary issue before trial, Mr. Jegathesan for the plaintiff submitted that from 1st July 1964 right up to the end of 1964, the Rent Control Ordinance, 1956 ceased to be in force in Kelantan owing to the fact that the Ruler-in-Council had failed to keep it in force by an order made under section 1(3) of the Control of Rent Ordinance, 1956. It therefore follows that the Ordinance continued in force in Kelantan, in the absence of such an order, for a further period of twelve months ending on 30th June, 1964.

It was further contended that the notice served on 29th September 1964 requiring the defendants to quit on 31st October 1964 was a proper notice during a period when the ordinance was not in force in Kelantan.

Mr. Wilson for the defendants argued that Kelantan Enactment No. 17 of 1964, which came into force on 1st January 1965 applied to the Control of Rent Ordinance, 1956 with retrospective effect. Whilst it was conceded that the Enactment contained no specific provisions to this effect, he argued that the retrospective effect arose by implication.

The defendants have not denied that the notice served upon them was a proper notice. What has to be decided is whether having terminated the tenancy on 31st October 1964, at a time when no control of rent law was in existence in Kelantan, the coming into force once again of the Control of Rent Ordinance, 1956 in the State gives such person who had declined to give up possession, protection.

Though this point was never raised, I feel that I should place it on record that in my view, laws pertaining to control of rent comes within the State List in the Ninth Schedule of the Federal Constitution, so that Kelantan Enactment No. 17 of 1964 constitutes a valid application of the Control of Rent Ordinance, 1956 for the purposes of the State of Kelantan.

Next, I would add that in my view, this is one of those rare instances where by necessary implication the Ordinance, as applied to Kelantan, has retrospective effect so as to afford protection to tenants in the second half of 1964. What is material is the law, not at the time of the filing of the action but the law at the time of the hearing.

The defendants, tenants of the premises had remained in possession thereof after the determination by any means of his tenancy. The words "any means" would include the determination of their tenancy by a notice such as was served in this case. They are therefore statutory tenants within the meaning of that term in section 20(a) of the Ordinance.

In the words of Bankes L.J. in *Ramon* v. *City of London Real Property Co.*(1) at page 54, referring to a provision which is in *pari materia* with our section 20,

> "It is however clear that in all the Rent Restriction Acts, the expression 'tenant' has been used in a special, a peculiar sense, and as including a person who might be described as an ex-tenant, someone whose occupation has commenced as a tenant and who has continued in occupation without any legal right to do so except possibly such as the Acts themselves conferred upon him."

Upon the coming into force of the Ordinance on 1st January 1965, therefore the defendants become statutory tenants. They are as such, protected from eviction by legal process.

Since the whole action hangs on this issue of law, the plaintiff must fail in his action. The action is therefore dismissed with costs.

Action dismissed.

Solicitors: *Jerry Lim Kay Seng & Co.; Wilson & Co.*